THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.6181 OF 2006

ORDER:

This Writ Petition is filed seeking a declaration that the action of respondents in not permitting the petitioner to collect toll at KM 85/10 near Srikalahasti on Puthalpet Naidupet Road in Chittoor district is arbitrary and illegal, and consequently, to direct the respondents to pay back balance lease amount to him.

It is not in dispute that in pursuance of tender notification dated 27.04.2004, petitioner was granted lease for collection of tolls on the bridge across Swarnamukhi river at Km 85/10 on Puthalpet Naidupet Road, Srikalahasti town in Chittoor district. An agreement to that effect was executed on 2.06.2004. Admittedly, the period of lease was valid up to 31.03.2006. Petitioner states that whereas under Schedule A appended to the agreement, the toll gate is situated at Km 85/10, he was asked to open toll gate by the authorities at Km 85/8. Though the petitioner made several representations to the respondents to hand over toll gate at Km 85/10, instead of Km 85/8, as it was causing serious financial loss, they failed to consider the same. In the circumstances, the petitioner filed W.P.No.12361 of 2004 which was disposed of by this Court at the stage of admission, by order dated 19.07.2004, with a direction to the Executive Engineer, R & B, Tirupathi, to consider the representation made by the petitioner dated 7.07.2004 and to pass appropriate orders in accordance with law. In pursuance thereof, by order dated 10.08.2004, the petitioner was informed that his request for change of tool point cannot be accepted. Aggrieved by the same, petitioner filed W.P.No.9634 of 2005. This Court having heard both parties by order dated 27.10.2005 without expressing any opinion as to the correctness of the rival claims made by parties, disposed of the Writ Petition granting leave and liberty to the petitioner to work out appropriate remedy as available under law

for redressal of his grievance. Thereafter, when the respondents by letter dated 22.01.2005 demanded a sum of Rs.2,76,888/- towards the alleged deficit stamp duty payable on the lease deed, and sought to invoke bank guarantee furnished by the petitioner to the tune of Rs.22,20,000/-, the petitioner was constrained to file W.P.No.24518 of 2005. This Court by order dated 16.11.2005 directed the respondents to refrain from invoking the bank guarantee.

In this Writ Petition the petitioner pleads that whereas the total rent paid by him during the lease period of 22 months was Rs.1,56,00,600/- the total receipts by collection of toll was only Rs.89,40,476/-. Thus, the illegal action of the respondents in not allowing him to run the toll gate at Km 85/10 caused serious loss to an extent of more than Rs.90.00 lakhs. In the circumstances, he made several representations requesting the respondents to allow him to continue to collect the toll at least till he gets back the lease amount. The petitioner also pleads that by virtue of G.O.Ms.No.64 dated 28.03.2005, the State Government has taken a decision to stop collection of toll tax on 26 roads/bridges in the State which includes the bridge across Swarnamukhi river, in respect of which the petitioner was collecting toll at 85/10 KM point on Puthalpet Naidupet Road with effect from 1.04.2006, no prejudice will be caused to the respondents even if the petitioner is allowed to collect the toll; however, the respondents failed to consider his request. Hence this Writ Petition.

I have heard Sri D. Prakash Reddy, learned senior counsel appearing for the petitioner, learned Government Pleader for Roads & Buildings, appearing for the respondents and perused the material on record.

As noted above, it is not in dispute that the lease in favour of the petitioner expired on 31.03.2006. During the substance of the lease though the petitioner raised a dispute with regard to toll point, contending that the respondents ought to have allowed him to run the toll gate at Km 85/10, instead of Km 85/8, respondents by order dated

10.08.2004 rejected the said request and advised the petitioner to maintain toll gate at Km 85/8 reiterating that it was the correct location for collection of toll with reference to the existing bridge across river Swarnamukhi. Aggrieved by the same, though the petitioner filed W.P.No.9634 of 2005, this Court declined to interfere; however, liberty was grated to the petitioner to work out appropriate remedy as available under law, on the ground that the relief sought by the petitioner was nothing but enforcement of an obligation arising out of the terms and conditions of a contract, which cannot be granted in exercise of the jurisdiction under Article 226 of the Constitution of India. It is not in dispute that the petitioner did not choose to institute any proceedings, and consequently, there was no adjudication upon the claim of the petitioner that under the agreement the respondents were bound to hand over toll point at Km 85/10. It is ununderstandable how the petitioner can now make the respondents responsible for the alleged loss suffered by him on account of not allowing him to operate toll point at Km 85/10. In the absence of such determination, even assuming that the petitioner suffered financial loss as pleaded by him, he cannot claim any right for extension of the lease period. The mere fact that the toll collection on the bridge has been stopped under G.O.Ms.No.64 dated 28.03.2005 with effect from 1.4.2006 will not entitle the petitioner to seek any such extension. At any rate, as already held in W.P.No.9634 of 2005, the claim of the petitioner, which arises out of a concluded non-statutory contract, cannot be dealt with under Article 226 of the Constitution of India.

Viewed from any angle, the Writ Petition is misconceived and without any substance.

However, it is made clear that this shall not preclude the petitioner to avail appropriate common law remedy for adjudication of his claim and for damages if any.

With the above observation, the Writ Petition is dismissed. No costs.

(G. ROHINI, J.)

April 3rd, 2006.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.6181 OF 2006

Between:

Pavuluri Satyanarayana. .. Petitioner.

And

The Engineer-in-Chief,
Roads & Building,
Errum Manzil,
Hyderabad and two others. .. Respondents.